

Order

Michigan Supreme Court
Lansing, Michigan

January 25, 2017

Stephen J. Markman,
Chief Justice

ADM File No. 2015-24

Robert P. Young, Jr.

Brian K. Zahra

Bridget M. McCormack

David F. Viviano

Richard H. Bernstein

Joan L. Larsen,

Justices

Proposed Amendment of
Rules 2.116 and 2.119 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rules 2.116 and 2.119 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text
is shown by strikeover.]

Rule 2.116 Summary Disposition

(A)-(F) [Unchanged.]

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i)-(ii) [Unchanged.]

(iii) the moving party or parties may file a reply brief in support of the motion. Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' response brief and must be limited to 5 pages. The reply brief must be filed and served at least 3 days before the hearing.

(iv) no additional or supplemental briefs may be filed without leave of the court.

- (b) If the court sets a different time for filing and serving a motion, ~~or a~~ response, or a reply brief, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.
- (c) A copy of a motion, ~~or~~ response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2)-(6) [Unchanged.]

(H)-(J) [Unchanged.]

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) [Unchanged.]

- (2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions.

- (a) Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits.
- (b) Except as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed.

- (c) Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type.
- (d) A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(3)-(4) [Unchanged.]

(B)-(G) [Unchanged.]

Staff Comment: The proposed amendments would amend the rules regarding motions for summary disposition to allow for the filing of reply briefs only in summary disposition proceedings. The State Bar of Michigan Representative Assembly had submitted a proposal that would have extended the summary disposition time frame an additional 7 days to accommodate filing of a reply brief and make the practice uniform in trial courts. Under current local practices, some judges allow reply briefs and others do not. Although the Court was not persuaded at this time that the overall time period for setting a hearing for motions for summary disposition should be extended, it did agree to publish for comment proposed amendments that would explicitly allow the moving party to file a reply brief at least 3 days before the scheduled hearing, and limit the reply brief to no more than 5 pages in length.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-24. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 25, 2017

Clerk